

Petition of Aquaria LLC
to the
Department of Telecommunications and Energy
July 28, 2004

Petition of Aquaria LLC to the Department of Telecommunications and Energy for clarification of the extent of the applicability of certain provisions of M.G.L. c. 164 and 165, as well as certain regulations of the Department promulgated pursuant thereto, to the development, construction, and operation of a water treatment/desalinization plant and related water pipes and mains; and, as deemed necessary by the Department, for approval of certain indebtedness to finance the development and construction of such facilities.

Aquaria LLC, a Delaware limited liability company d/b/a Aquaria Water LLC (“Aquaria”), hereby petitions the Department of Telecommunications and Energy (the “Department”) for advisory rulings and findings clarifying the extent to which certain provisions of chapter 164 and 165 of the Massachusetts General Laws, as well as certain regulations of the Department promulgated pursuant thereto, would apply to a water treatment/desalination plant (the “Plant”) in the Town of Dighton and to related pipes and mains and other accessory facilities (the “Water Lines”) necessary to convey the treated water to certain cities and towns in the Commonwealth, including the City of Brockton (the Plant and Water Lines, collectively, the “Water Treatment Facility”); and, if and to the extent deemed necessary by the Department pursuant to such requested ruling, for approval by the Department of certain indebtedness to be issued by Aquaria to finance the development and construction of the Water Treatment Facility.

In support of this Petition, Aquaria respectfully represents as follows:

1. As is set forth in the testimony of José Antonio Membela Martínez, submitted as Exhibit A to this Petition, Aquaria intends to construct, finance, own and operate the Water Treatment Facility. The Plant will be sited on an industrial-zoned parcel within the Town of Dighton (the “Site”) and Aquaria will build the Water Lines from the Site to certain cities and towns within the Commonwealth, including the City of Brockton. Initially, the Plant will be capable of producing up to 5,000,000 gallons of desalinated water per day (and the Water Lines will be capable of transporting up to 10,000,000 gallons per day). The Plant will be capable of expansion in the future to produce up to 10,000,000 gallons of desalinated water per day. The Water Lines will all be located in the Commonwealth. Aquaria intends to sell desalinated water manufactured at the Plant exclusively at wholesale to cities and towns under bulk contracts negotiated

at arms length, without exercise of market power by Aquaria. Aquaria will make no sales of water at retail to end users (except to the extent that such municipalities choose to utilize a portion of such water for the needs of their own facilities and departments). Neither Aquaria nor any of its affiliates shall have any exclusive franchise or service territory, nor will Aquaria's Water Lines include distribution facilities that serve end users of the water produced at the Plant. All end users of water in the cities and towns will receive their water (and the water bills therefor) from such municipalities, and each city and town will establish the retail rates paid for water by such end users. The cities and towns that contract with Aquaria for the supply of water in bulk (sometimes hereinafter referred to as "Bulk Water Contracts" or individually as a "Bulk Water Contract") will have other sources of water in addition to the water purchased from Aquaria, so that Aquaria will not be the sole source of water for any city or town. The Bulk Water Contracts will not be with end users of water but instead with cities and towns that will carry out the final distribution and delivery of water to end users.

2. As is also set forth in the accompanying testimony of Juan Pablo Díaz Batanero, submitted as Exhibit B to this Petition, Aquaria has executed a Bulk Water Contract with the City of Brockton (the "Brockton Contract"). The Brockton Contract and each of the Bulk Water Contracts Aquaria executes with other cities and towns are, by reason of the public records law (M.G.L. Chapter 66 Section 10) available for public scrutiny.

3. As is also set forth in the accompanying testimony of Antonio Lopez Cerdan, submitted as Exhibit C to this Petition, in order to finance the development, construction and operation of the Water Treatment Facility, Aquaria is proposing to issue indebtedness (the "Loan") and in connection therewith enter into loan agreements and

other financing arrangements with certain lenders and financial guarantors (collectively, "Lenders" or "mortgagees") pursuant to loan documentation substantially in the form submitted as Exhibit D to this Petition (the "Loan Documentation") under cover of a letter requesting confidential treatment thereof. The Loan Documentation is submitted to the Department for two purposes: First, so that the Department may satisfy itself that the proposed Loan will be a project-financing arrangement of a sort typically utilized in significant capital projects, which Aquaria asserts should allow the Department to conclude that approval of the Loan pursuant to chapter 164 is either not required or if required, that such Loan is "reasonably necessary" to finance the Water Treatment Facility; and second, so that the Department has before it the relevant evidence to the extent that the Department determines such approval is necessary. The amount of the Loan and the interest rate will be within the ranges specified in the affidavit attached as Exhibit C.

4. Section 1 of chapter 165 defines a company subject to the provisions of such chapter as "every person, partnership, association or corporation, other than a municipal corporation, . . . engaged in the distribution and sale of water in the commonwealth through its pipes or mains." Section 2 of chapter 165 makes certain sections of chapter 164 applicable to such regulated water companies. As described herein, the proposed business activities of Aquaria would seem to be included in the definition of entities subject to such provisions of chapters 164 and 165.

5. Despite engaging in activities that would define Aquaria as a water company, the nature of those activities - the making of sales of water at wholesale and not at retail - would seem to make the application of several sections of those chapters inappropriate. The majority of the regulatory supervision to which an entity is subject

under the included sections of chapter 164 involves the oversight of rates charged by a monopolist supplier to end-use customers. Because Aquaria, pursuant to Bulk Water Contracts, will not be selling water at retail and will only be selling water to cities and towns which, in turn, will be establishing water rates for their end user customers based on rates determined solely by such municipalities, Aquaria maintains it is reasonable to interpret Section 94 of Chapter 164 so as to conclude that the Department need not regulate the terms of such Bulk Water Contracts nor require the Bulk Water Contracts of Aquaria to be filed with the Department. Further, because Aquaria's rates and charges under its Bulk Water Contracts are market-based, wholesale supply arrangements, Aquaria maintains it is reasonable for the Department to conclude that requirements typically imposed on water companies selling and retail and operating on a cost-of-service basis will not be relevant to Aquaria or to its Bulk Water Contracts. In the instant case, the conclusion that Aquaria would not be subject to the strict financial oversight requirements provided in Chapter 164 is a reasonable interpretation of the law consistent with Aquaria's exclusively wholesale sale of water pursuant to Bulk Water Contracts since Aquaria's earnings will not be defined in terms of an authorized return on invested capital.

6. The applicability of the statutory provisions related to rate oversight will impose substantial hardship on the ability of Aquaria or any wholesale water company to obtain financing in order to engage in its business. Specifically, a wholesale water company's ability to obtain project financing could be extensively curtailed and made much more expensive if potential lenders faced the prospect of water sale revenues being constantly subject to change by regulatory action. It is the relative certainty resulting from having a known and enforceable market-based contract pricing provision that

allows project financing to proceed. In this respect, Aquaria maintains it is in a situation somewhat analogous to that faced by entities that intended to engage in the generation of electric power for sale exclusively at wholesale before the enactment of statutory changes imposing different regulatory treatment of wholesale and retail sales of electricity.

7. In addition, as outlined in the affidavits submitted with this Petition, the ability of a wholesale water company such as Aquaria to obtain financing would be extremely curtailed if potential lenders faced the prospect of themselves becoming subject to utility-regulatory oversight upon exercise of typical lenders' remedies upon default by a borrower. Pursuant to the Loan Documentation, Aquaria will grant to its Lenders mortgages on the Water Treatment Facility, as is typical for project financing such as the Loan. If Aquaria defaulted on certain of its contractual obligations under the Loan Documentation, a mortgagee would presumably have the right to exercise (subject to the terms of the Loan Documentation) typical mortgagees' remedies, including taking possession of the Water Treatment Facility or selling the Water Treatment Facility at foreclosure sale. As indicated in the testimony submitted with this Petition, Aquaria's Project Lenders are unwilling to finance the Water Treatment Facility if the Project Lenders themselves face the prospect of becoming a regulated water company upon exercise of standard mortgagee rights.

8. In light of these factors, Aquaria hereby requests clarification as to the applicability of certain provisions of chapter 164 and related matters. Specifically, Aquaria hereby requests findings and rulings that: (i) Aquaria is a water company under Chapter 165, Section 1; (ii) so long as Aquaria's business is exclusively related to the production of desalinated water and the wholesale supply of such water in bulk to cities and towns in the Commonwealth (the "Wholesale Business Condition"), the Bulk Water

Contracts need not be filed with the Department, and the pricing and terms of such Bulk Water Contracts will not be subject to regulation by the Department; (iii) so long as Aquaria's business continues to satisfy the Wholesale Business Condition, then: (A) Aquaria's Lenders, not otherwise water companies, would in the event they took possession under the mortgage, either not become "water companies" or be subject to the same minimal supervision applicable to Aquaria; (B) Aquaria would not be subject to the provisions of Sections 96, 99, 101, 102A and 102B of Chapter 164 with respect to any consolidation, sale, merger or acquisition in which it may be involved; (C) Aquaria would not be subject to the provisions of Section 4 through 33 of Chapter 164 relating to the corporate rights and liabilities of gas and electric companies, made applicable to water utilities by Chapter 165, Section 2; (D) Aquaria would not be subject to the provisions of Sections 92 and 128 of Chapter 164; (E) Aquaria would not be subject to the informational requirements prescribed pursuant to Sections 80, 81, 82 and 83 of Chapter 164 respecting books, accounts and records and reporting returns to the Department; and (F) Aquaria would not be subject to the regulations promulgated by the Department related to ratemaking oversight (including those related to return on equity and to accounting procedures, set forth in 220 C.M.R. Sections 31.00 and 52.00 respectively); and (iv) so long as Aquaria's business continues to satisfy the Wholesale Business Condition, either (as the Department in its discretion may determine) the Loan is not subject to the approval of the Department pursuant to Section 14 of Chapter 164, or in the alternative (to the extent that the Department finds such approval pursuant to Section 14 to be required) the Loan is approved by the Department.

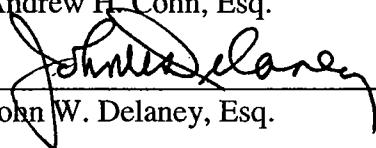
WHEREFORE, Aquaria respectfully requests that the Department make such finding and issue such rulings as are set forth in this Petition, and that the Department grant such further relief as it deems just and appropriate.

Respectfully submitted on behalf of
Petitioner:

Aquaria LLC d/b/a
Aquaria Water LLC

By:


Andrew H. Cohn, Esq.


John W. Delaney, Esq.

Wilmer Cutler Pickering
Hale and Dorr LLP
60 State Street
Boston, MA 02109

EXHIBIT A

AFFIDAVIT of José Antonio Membiela Martínez

Now comes the undersigned affiant, José Antonio Membiela Martínez and does depone, swear and say as follows:

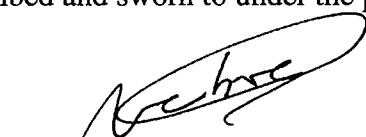
1. I am the Chief of the Department of Operation Services of the Division of Waste Treatment and Clean Water Generation of Inima, Servicios Europeos de Medio Ambiente, S.A. (“Inima”), the managing member of Aquaria LLC, d/b/a Aquaria Water LLC (“Aquaria”), and as such am authorized to submit this affidavit to describe the proposed water treatment facility which is the subject of this petition.
2. Aquaria intends to design, permit, construct and operate a water treatment/desalinization plant (“the Plant”) in North Dighton, Massachusetts to withdraw and treat water from the Taunton River. The proposed Plant will employ conventional water treatment, followed by a reverse osmosis process to remove salinity.
3. The Plant will be sited on an industrial-zoned parcel within the Town of Dighton. Aquaria will also build related pipes and mains and other accessory facilities (the “Water Lines”) from the Plant to certain cities and towns within the Commonwealth, including the City of Brockton.
4. The initial Plant building will be designed to house processing capacity sufficient to produce up to 5,000,000 gallons of desalinated water per day.
5. The Water Lines will be capable of transporting up to 10,000,000 gallons of desalinated water per day. The Water Lines will all be located in the Commonwealth.
6. The Plant will be capable of expansion in the future to produce up to 10,000,000 gallons of desalinated water per day.
7. Aquaria intends to sell desalinated water manufactured at the Plant exclusively at wholesale to cities and towns under bulk contracts negotiated at arms length, without exercise of market power by Aquaria (“Bulk Water Contracts” or individually a “Bulk Water Contract”). The Bulk Water Contracts will not be with end users of water but instead with cities and towns that will carry out the final distribution and delivery of water to end users.
8. Aquaria will make no sales of water at retail to end users, except to the extent that such municipalities choose to utilize a portion of such water for the needs of their own facilities and departments.
9. Neither Aquaria nor any of its affiliates shall have any exclusive franchise or territory.
10. Aquaria’s Water Lines will not include distribution facilities that serve end users of the water produced at the Plant.

11. All end users of water in the cities and towns will receive their water and the water bills therefore from such cities and towns.

12. Each city and town will establish the retail rates paid for such water by end users.

13. The cities and towns that have or will contract with Aquaria under Bulk Water Contract will have other sources of water in addition to the water produced by Aquaria.

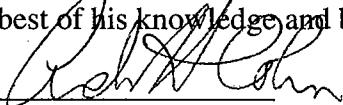
Subscribed and sworn to under the pains and penalties of perjury this 14th day of July, 2004.


José Antonio Membela Martínez

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this 14th day of July, 2004, before me, the undersigned notary public, personally appeared José Antonio Membiela Martínez, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person who signed the preceding or attached document in my presence, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his knowledge and belief.


Notary Public

[affix seal] A True Copy Attest
ANDREW H. COHN
NOTARY PUBLIC
My commission expires July 15, 2005

EXHIBIT B

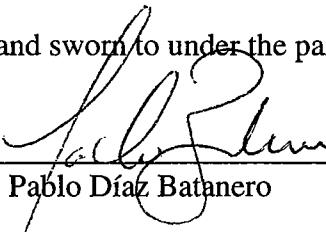
AFFIDAVIT of Juan Pablo Díaz Batanero

Now comes the undersigned affiant, Juan Pablo Díaz Batanero and does depone, swear and say as follows:

1. I am the General Manager of Aquaria LLC, d/b/a Aquaria Water, LLC ("Aquaria"), and as such am authorized to submit this affidavit.
2. Aquaria intends to design, permit, construct and operate a water treatment/desalinization plant ("the Plant") in North Dighton, Massachusetts to withdraw and treat water from the Taunton River. The proposed Plant will employ conventional water treatment, followed by a reverse osmosis process to remove salinity.
3. The Plant will be sited on an industrial-zoned parcel within the Town of Dighton. Aquaria will also build related pipes and mains and other accessory facilities (the "Water Lines") from the Plant to certain cities and towns within the Commonwealth, including the City of Brockton.
4. The City of Brockton has entered into a Water Purchase Agreement with Inima, Servicios Europeos de Medio Ambiente, S.A. ("Inima") jointly with Bluestone Energy Services, Inc. ("Bluestone") dated as of May 22, 2002 (the "Brockton Contract").
5. Pursuant to the terms of the Brockton Contract, at the closing of the project finance loan for the construction of the Plant and the Water Lines, the Brockton Contract will be assigned to Aquaria and Aquaria will become substituted as the "Supplier" under the Brockton Contract in lieu of Inima and Bluestone.
6. The Brockton Contract calls for the supply of water in bulk to the City of Brockton.
7. The Brockton Contract and each of the bulk water contracts Aquaria executes from time to time with other cities and towns are, by reason of the public records law (M.G.L. ch. 66, § 10) available for public scrutiny.
8. The Brockton Contract does not provide for any sales of water by the Supplier to individual end users in the City of Brockton; all delivery of water to end users within the City of Brockton shall be made by the City of Brockton acting by and through its Water Department.
9. All end users of water in the City of Brockton will receive their water and water bills from the City of Brockton and the City of Brockton will establish the retail rates paid for such water by the end users.
10. The City of Brockton has other sources of water in addition to the water proposed to be sold to it by Aquaria LLC pursuant to the Brockton Contract.

11. The Brockton Contract has the benefit of a Special Act passed by the Legislature and signed into law by the Governor of the Commonwealth of Massachusetts. A copy of this Special Act is attached to this Affidavit.

Subscribed and sworn to under the pains and penalties of perjury this 14th day of July, 2004.



Juan Pablo Diaz Batanero

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this 14th day of July, 2004, before me, the undersigned notary public, personally appeared Juan Pablo Díaz Batanero, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person who signed the preceding or attached document in my presence, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his knowledge and belief.


Andrew H. Cohn

Notary Public

[affix seal]

A True Copy Attest
ANDREW H. COHN
NOTARY PUBLIC
My commission expires July 15, 2005

5Q6234507

05/2004

[Tariff stamp]

[Tariff stamp]

Martin M^o Recarte Casanova
NOTARY
P^a Gral. Martínez Campos 41 2nd
Telephone: 91 308 28 15
28010 MADRID

[Bears a round seal reading - NOTARY OF MARTIN M^o RECARTE CASANOVA - MADRID]

WRIT OF DOCUMENT LEGALIZATION AND
EXPOSITION REQUESTED BY THE COMPANY
INIMA SERVICIOS EUROPEOS DE MEDIO
AMBIENTE, S.A.

NUMBER TWO THOUSAND FIVE HUNDRED FIFTY
SIX.

IN MADRID, on the twenty-first day of July in the
year two thousand and four

Before me, MARTIN MARIA RECARTE CASANOVA,
Notary of the Illustrious College of,

APPEARING:

ANTONIO LOPEZ CERDAN, of legal age, married,
resident in Madrid, Gobelas, number 35-37, bearing national
identity card/tax identification number: 74207081-L.

ACTING: in the name and on behalf of "INIMA
SERVICIOS EUROPEOS DE MEDIO AMBIENTE, S.A.",
a Spanish corporation domiciled in Madrid, calle Gobelas,
number 35-37, incorporated for an indefinite term under the
name of Sedma, Servicios Europeos de Medio Ambiente,
S.A by virtue of the deed authorized by the Notary of
Madrid, Manual Clavero Blanc, on 1 August 1991. The
corporate name was changed to the current by virtue of the
deed authorized by the Notary of Madrid Antonio
Fernández-Golfin Aparicio on 30 December 1998 under the



protocol number 3876 and the corporate identification number is A-80099732. -----

The company is registered in the Mercantile Registry
of Madrid, volume 1804, folio 198, section 8, sheet M-
32,567.

EMPOWERED FOR THIS GRANTING by virtue of
the power of attorney granted before the Notary of Madrid,
Pilar López-Contreras Conde on 24 April 2002 under the
protocol number 833, a true copy of which is duly inscribed
in the Mercantile Registry of Madrid, as is evidenced before
me, and which empowers the appearing party, *inter alia*, to
represent the Company before all entities of the National,
Regional, Provincial and Municipal governments, or any
other public organism, and all agencies and dependencies of
the Government, business corporations, or natural and
artificial persons of any nature, in any and all types of
actions, presenting writs, ratifying same, and enforcing any
right.

He has, in my opinion, the necessary legal capacity
and interest for this act and therefore, -----

He delivers to me a document in the English language and the sworn translation thereof into Spanish and voluntarily signs same in my presence of his own free will, declaring awareness of the contents thereof and requesting



PAPER FOR EXCLUSIVE NOTARIAL USE

5Q6234508

06/2004

[Tariff stamp] [Tariff stamp]

[Bears a round seal reading - NOTARY OF MARTIN M^o RECARTE CASANOVA - MADRID]

the validity and application thereof according to the laws of the countries in which said writ will be applied. I the Notary witness the signature of the appearing party in said document which was made in my presence, and produce a photocopy of the said documents with the signature of the appearing party and my true copy attest, with said photocopy being attached hereto a forming an integral part hereof.

The appearing party having read the foregoing, by his decision, finds the contents hereof in order and signs this deed with me, the Notary and I CERTIFY that I have identified the appearing party by the supplementary means of the national identity card presented thereby, and that the said principle of free will has been met and that this granting conforms to the law and the duly informed will of the appearing party or parties, and all the contents hereof, issued on two pages of tariff-stamped pages exclusively for notarial use, series and number that of the current page and the preceding consecutively in reverse order from the current page, I the Notary certify...-



THE SIGNATURE OF THE APPEARING PARTY
FOLLOWS.- SIGNED MARTIN MARIA RECATE CASANOVA .-
SIGNED AND SEALED. -----

Attachments follow.-



PAPER FOR EXCLUSIVE NOTARIAL USE

5Q6234512

05/2004

[Tariff stamp] [Tariff stamp]

[Bears two round seals reading - NOTARY OF MARTIN M^A RECARTE CASANOVA - MADRID]

TRUE COPY of the original which shall reflect this issue. I issue this copy for THE APPEARING PARTY AS ACTING on six pages of paper for exclusive notarial use numbered 5Q6234507, 5Q6234508, 5Q6234509, 5Q6234510, 5Q6234511, and 5Q6234512, to which I add my signature, seal and flourish in Madrid on the twenty-first day of July in the year two thousand and four. I CERTIFY.

[Illegible signature]

[Bears the official notarial seal]

[Bears a round seal reading - NOTARY OF MARTIN M^A RECARTE CASANOVA - MADRID]Tariff application - Additional Disposition 3, Law 3/89
DOCUMENT WITHOUT AMOUNT

[Tariff stamps and seal of the College of Notaries of Madrid]

Sole Legalization Apostille
(Hague Convention of 5 October 1961)
(Royal Decree 2433/1978 of 2 October)

1. Country: Spain
This public document
2. Has been signed by Martín María Recate Casanova
3. Acting as Public Notary
4. It has been sealed/tariff stamped with that of the said
Notary

CERTIFICATION

5. In Madrid
6. 22 July 2004
7. By the Dean of the Notarial College of Madrid
8. With the number 30,385
9. Seal/stamp
10. Signature:

[Illegible signature]

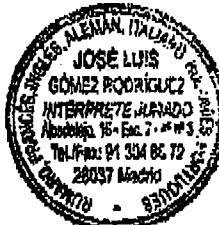
M^a Nieves González de Echávarri Díaz
Delegated signature of the Dean



28-07-04 15:36 INIMA

ID-913847886

P 08/27



José Luis Gómez Rodríguez
Intérprete jurado de ~~inglés~~
certifica que la que antecede
es traducción fija y completa
al ~~inglés~~ de un
documento redactado en
lengua ~~español~~

En Madrid, 28 JUL 2004

28 JUL 2004

MINISTERIO DE ASUNTOS EXTRASJEROS Y DE COOPERACIÓN LEGALIZACIONES visto bueno para legalizar la firma de D. JOSE LUIS GOMEZ RODRIGUEZ por ser, al parecer, la correcta. Mirar en el contenido del documento si anterior destino que pueda ser correcto. Madrid, 28 JUL 2004 P. EL SUBSECRETARIO, Ernesto Méndez Méndez Jefe de Negocios



05/2004

EXCELENTE



5Q6234513

Martín M. Recarte Casanova

NOTARIO

Pº Gral. Martínez Campos, 41 - 2º

Teléfono 91 308 28 15

28010 MADRID

ACTA DE EXHIBICION Y LEGITIMACION DE DOCUMENTO A INSTANCIA DE LA SOCIEDAD INIMA SERVICIOS EUROPEOS DE MEDIO AMBIENTE, S.A. ——
NUMERO DOS MIL QUINIENTOS CINCUENTA Y SEIS.

EN MADRID, a veintiuno de Julio del dos mil cuatro.

Ante mí, MARTIN MARIA RECARTE
CASANOVA, Notario del Ilustre Colegio de , —————
————— COMPARECE:

DON ANTONIO LOPEZ CERDAN, mayor de edad,
casado, vecino de Madrid, calle Gobelas, número 35-37, con
DNI/NIF número: 74207081-L. —————

INTERVIENE: En nombre y representación de la Sociedad denominada "INIMA SERVICIOS EUROPEOS DE MEDIO AMBIENTE, S.A.", de nacionalidad española, domiciliada en Madrid, calle Gobelas número 35-37; constituida por tiempo indefinido con la denominación de "Sedma, Servicios Europeos del Medio Ambiente, S.A.", en escritura autorizada por el Notario de Madrid, Don Manuel Clavero Blanc, el 1 de Agosto de 1.991. Fue cambiada su

denominación por la que actualmente ostenta en escritura autorizada por el Notario de Madrid, Don Antonio Fernández-Golfin Aparicio el 30 de diciembre de 1.998, con el número 3876 de su orden de protocolo y su CIF es el número A-80099732.-----

Figura inscrita en el Registro Mercantil de Madrid, al tomo 1.804, folio 198, sección 8^a, en la hoja M-32.567.-----

FACULTADO PARA ESTE OTORGAMIENTO en virtud de la escritura de poder a su favor concedida ante el Notario de Madrid, Doña Pilar López-Contreras Conde, el día 24 de abril de 2.002 con el número 833 de su protocolo, cuya copia auténtica debidamente inscrita en el Registro Mercantil de Madrid, al efecto se me exhibe, y de las que resulta facultado el aquí compareciente entre otras cosas para representar a la Compañía ante toda clase de Organos del Estado, Comunidad Autónoma, Provincia y Municipio o cualquier otro organismo público y en todos los centros y dependencias de la Administración, sociedades mercantiles o personas físicas o jurídicas de cualquier clase y en toda clase de asuntos, presentando escritos, ratificándose en ellos y solicitando cualquier derecho.-----

Le juzgo con capacidad e interés legítimo para este acto, y al efecto, -----

Me hace entrega de un documento en idioma inglés y



05/2004

5Q6234514

su traducción jurada al español, que lo firma a mi presencia libre y voluntariamente, manifestando conocer su contenido y que quiere que produzca los efectos que le sean aplicables con arreglo a las leyes del país donde va a surtir efecto. Yo el Notario legítimo por diligencia en dicho documento la firma del compareciente, que ha sido puesta a mi presencia por el mismo, y deduzco fotocopia de los documentos citados, con la firma del compareciente y la diligencia de legitimación, cuya fotocopia dejo unida a este Acta pasando a formar parte integrante de la misma.

Leido cuanto antecede por el compareciente, previa su elección, lo encuentra conforme con su voluntad y firma conmigo el Notario que DOY FE de haberle identificado por el medio supletorio de su documento de identidad exhibido y al principio reseñado de que el consentimiento ha sido prestado libremente, de que el otorgamiento se adecua a la legalidad y a la voluntad debidamente informada del/de los otorgante/s e interviniente/s, y en cuanto proceda de lo demás consignado en este acta que queda extendida en dos

folios de papel timbrado del Estado para documentos notariales, serie y número el del presente y el anterior en orden correlativo inverso, yo el Notario doy fe.-

SIGUE LA FIRMA DEL COMPARCIENTE.- SIGNADO: MARTIN MARIA RECARTE CASANOVA
RUBRICADOS Y SELLADO.

Sigue Documentación Unida.-

28-87-04 15:37 INIMA

ID=913847888

P 13/27

PAPÉL INCLUIDO PARA DOCUMENTOS NOTARIALES



05/2004

EXHIBIT C

506234515

AFFIDAVIT of Antonio López Cerdán

Now comes the undersigned affiant, Antonio López Cerdán and does depone, swear and say as follows:

1. I am employed in the Division of Economic Finance of Inima, Servicios Europeos de Medio Ambiente, S.A. ("Inima"), the managing member of Aquaria LLC, d/b/a Aquaria Water LLC ("Aquaria"), and as such am authorized to submit this affidavit to describe the proposed financing of the water treatment facility which is the subject of this petition.

2. I refer in this affidavit to the Affidavit of José Antonio Membela Martínez (Exhibit A to this Petition) and the Affidavit of Juan Pablo Díaz Batanero (Exhibit B to this Petition). All the terms used in my affidavit below that are not otherwise defined have the meanings set forth in those other affidavits.

3. In order to finance the development and construction of the Plant in North Dighton, Massachusetts, and the Water Lines to certain cities and towns within the Commonwealth of Massachusetts, including the City of Brockton, Aquaria will be borrowing substantial funds from its proposed project finance lenders, in particular Banco Santander Central Hispano, a bank with headquarters in Madrid, Spain ("BSCH" or "Project Lenders"). The loan to Aquaria by BSCH may be guaranteed by Ambac Assurance Corporation ("Ambac").

4. In order to finance the development, construction and operation of the Plant and the Water Lines (collectively, sometimes referred to as the "Water Treatment Facility"), Aquaria is proposing to borrow money from, issue indebtedness to, BSCH (the "Loan") and in connection therewith to enter into loan agreements and other financing arrangements with BSCH pursuant to loan documentation substantially in the form submitted as Exhibit D to the Petition of Aquaria (the "Loan Documentation").

5. The Loan is a project financing arrangement of the sort typically utilized in significant capital projects such as the Water Treatment Facility.

6. The Project Lenders have reviewed the regulatory provisions affecting water treatment plants similar to the Water Treatment Facility in the Commonwealth of Massachusetts and the Project Lenders have required, as a condition of making the Loan to Aquaria, that Aquaria obtain the assurances set forth in Aquaria's Petition to the Department of Telecommunications and Energy (the "Department"). Specifically

- a) The Project Lenders have requested that Aquaria obtain certain specific assurances from the Department in order to confirm that the Project Lenders will not face the prospect of becoming a regulated water company upon exercise of standard mortgagee rights that are included in the terms of the Loan documentation including, for example, the exercise by the Project

28-07-94 15:38 INIMA

ID=913847880

- b) Lenders of their rights under the mortgage to exercise typical mortgages' remedies, including taking possession of the Water Treatment Facility or selling the Water Treatment Facility at foreclosure sale.
- c) Aquaria's Project Lenders have also required assurance that so long as Aquaria's business continues to be exclusively related to the production of desalinated water and the wholesale supply of such water in bulk to cities and towns in the Commonwealth (the "Wholesale Business Condition") that Aquaria's Project Lenders, not otherwise water companies, would in the event they took possession under the mortgage either not become "water companies" or be subject to the same minimal supervision applicable to Aquaria.
- d) In addition, the Project Lenders have required Aquaria to obtain findings and rulings from the Department that (i) Aquaria would not be subject to the provisions of Sections 96, 99, 101, 102A and 102B of Chapter 164 with respect to any consolidation, sale, merger or acquisition in which it may be involved; (ii) Aquaria would not be subject to the provisions of Section 4 through 33 of Chapter 164 relating to the corporate rights and liabilities of gas and electric companies, made applicable to water utilities by Chapter 163, Section 2; (iii) Aquaria would not be subject to the provisions of Sections 92 and 123 of Chapter 164; (iv) Aquaria would be not be subject to the informational requirements prescribed pursuant to Sections 80, 81, 82 and 83 of Chapter 164 respecting books, accounts and records and reporting returns to the Department; and (v) Aquaria would not be subject to the regulations promulgated by the Department related to ratemaking oversight (including those related to return on equity and to accounting procedures, set forth in 220 C.M.R. Sections 31.00 and 52.00 respectively).

7. The final amount of the Loan will be based upon the final estimated cost of construction that will be determined when bids are received. However, the Loan amount will be between \$32,000,000 and \$36,000,000.

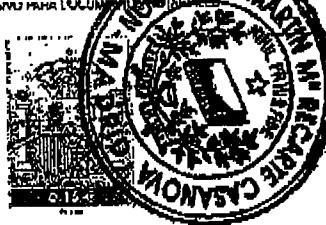
8. The interest rate on the promissory note for the Loan will have an interest rate between 4.60% and 5.60% per annum.

9. It is essential for the financing of the Water Treatment Facility that Aquaria obtain the findings and rulings requested in its Petition.

28-07-04 15:38 INIMA

ID=913847888

P 15/27



5Q6234516

05/2004

Subscribed and sworn to under the pains and penalties of perjury this 19th day of July, 2004.

Antonio López Cerdán

On this 19th day of July, 2004, before me, the undersigned notary public, personally appeared Antonio López Cerdán proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person who signed the preceding or attached document in my presence, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of her knowledge and belief.

Notary Public

LEGITIMACION DE FIRMA. Yo, MARTIN MARIA RECARTE CASANOVA, Notaria del Ilustre Colegio de Madrid, DOY FE Y LEGITIMO la firma que antecede de DON ANTONIO LOPEZ CERDAN, con DNI número 74.207.081-L, por haber sido puesta en mi presencia.

Lo hago constar en mi libro indicador con el numero 5.310

Madrid, a 21 de julio de 2004.

A30126



ANEXO CDECLARACIÓN JURADA de Antonio López Cerdán

Comparece el declarante abajo firmante, Antonio López Cerdán, quien afirma, jura y declara lo que sigue:

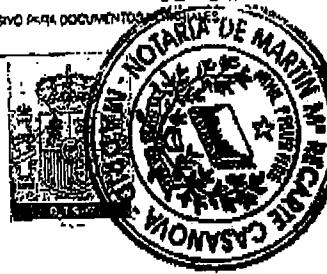
1. Trabajo en la División de Finanzas Económicas de Inima, Servicios Europeos de Medio Ambiente, S.A. ("Inima"), el miembro gestor de Aquaria LLC, d/b/a Aquaria Water LLC ("Aquaria"), y como tal estoy autorizado para efectuar esta declaración jurada con el fin de explicar la propuesta de financiación relativa a la instalación para el tratamiento de aguas que constituye el objeto de esta petición.
2. En esta declaración jurada me remito a la declaración jurada de José Antonio Membiela Martínez (anexo A de la presente petición) y a la declaración jurada de Juan Pablo Díaz Batanero (anexo B de la presente petición). Todos los términos utilizados en mi declaración jurada, que sigue a continuación, y salvo indicación en contra, tienen el mismo significado que el atribuido en las otras declaraciones juradas.
3. Con el fin de financiar el desarrollo y la construcción de la planta en North Dighton, Massachusetts, así como las tuberías del agua hacia determinadas ciudades y pueblos dentro del Estado de Massachusetts, incluyendo la ciudad de Brockton, Aquaria aceptará fondos de cuantía considerable de los prestamistas propuestos para la financiación del proyecto, en concreto Banco Santander Central Hispano, banco cuya sede social se encuentra en Madrid, España ("BSCH" o "Prestamistas del proyecto"). El préstamo a Aquaria por parte de BSCH podría estar garantizado por Ambac Assurance Corporation ("Ambac").
4. Con el fin de financiar el desarrollo, la construcción y la explotación de la planta y de las tuberías del agua (denominados colectivamente en ocasiones "Instalación para el tratamiento de aguas"), Aquaria propone aceptar un préstamo, asumiendo la correspondiente deuda con BSCH (el "préstamo"), y a este respecto propone alcanzar un acuerdo sobre el préstamo y otros acuerdos de financiación con BSCH de conformidad con la documentación del préstamo, fundamentalmente el anexo D de la presente petición formulada por Aquaria (la "documentación del préstamo").
5. El préstamo constituye un acuerdo de financiación del proyecto del tipo convencionalmente utilizado en proyectos de capital importante, como la instalación para el tratamiento de aguas.
6. Los prestamistas del proyecto han revisado las disposiciones legales relativas a las plantas para el tratamiento de aguas similares a la instalación para el tratamiento de aguas en el Estado de Massachusetts, y dichos prestamistas del proyecto han exigido, como condición para conceder el préstamo a Aquaria, que Aquaria obtenga las garantías descritas en la petición de ~~Aquaria~~ al Departamento de Telecomunicaciones y Energía (el "Departamento"). En concreto:



28-07-04 15:39 INIMA

ID=913847886

P 17/27



05/2004

506234517

compañía de agua reglamentada por virtud del ejercicio de los derechos hipotecarios legales contemplados en las cláusulas de la documentación del préstamo, incluyendo por ejemplo, el ejercicio por los prestamistas del

- b) Proyecto de sus derechos hipotecarios para obtener las reparaciones propias del acreedor hipotecario, incluyendo la adquisición de la posesión de la instalación para el tratamiento de aguas, o la venta de la instalación para el tratamiento de aguas como venta en ejecución de hipoteca.
- c) Los prestamistas del proyecto de Aquaria han exigido igualmente garantías de que mientras el objeto comercial de Aquaria continúe estando exclusivamente relacionado con la producción de agua desalinizada y el suministro al por mayor de dicho agua en grandes cantidades a las ciudades y pueblos del Estado (la "condición de comercio al por mayor") los prestamistas del proyecto de Aquaria, que no son compañías de agua, en caso de adquirir la posesión en virtud de la ejecución de hipoteca no se convertirán en "compañías de agua" ni quedarán sometidas a la misma supervisión mínima que es aplicable a Aquaria.
- d) Además, los prestamistas del proyecto han exigido a Aquaria que obtenga una decisión del Departamento conforme a la cual (i) Aquaria no quedará sometida a las disposiciones contenidas en las secciones 96, 99, 101, 102A y 102B del capítulo 164 con respecto a cualquier fusión, venta, unión o adquisición en la que pudiera verse involucrada; (ii) Aquaria no quedará sometida a las disposiciones de la secciones 4 a 33 del capítulo 164 con respecto a los derechos y obligaciones sociales de las compañías de gas y electricidad que resulten aplicables a las instalaciones de agua en virtud del capítulo 165, sección 2; (iii) Aquaria no quedará sometida a las disposiciones de las secciones 92 y 128 del capítulo 164; (iv) Aquaria no quedará sometida a las exigencias de información impuestas conforme a las secciones 80, 81, 82 y 83 del capítulo 164 con respecto a los libros, cuentas y registros y las declaraciones de la renta comunicadas al Departamento; y (v) Aquaria no quedará sometida a la normativa aprobada por el Departamento referente a la supervisión sobre la fijación de precios (incluyendo las disposiciones relacionadas con el rendimiento de los activos y los procedimientos contables, establecidas en el 220 C.M.R. Secciones 31.00 y 52.00, respectivamente).

7. El importe final del préstamo se calculará a partir del coste final de construcción estimado, el cual será determinado una vez recibidas las ofertas. No obstante, el importe del préstamo estará comprendido entre los 32.000.000\$ y los 36.000.000\$.

8. El tipo de interés del pagaré del préstamo será un tipo de interés comprendido entre el 4,60% y el 8,60% anual.

Es imprescindible para la financiación de la instalación para el tratamiento de aguas que Aquaria obtenga la decisión exigida en esta petición.



28-07-04 15:39 INIMA

ID=913847880

Firmado y jurado so pena de perjurio el 19 de julio de 2004.

Antonio López Cerdán

Con fecha de 19 de julio de 2004, comparece en persona ante mí, el abajo firmante notario público, Antonio López Cerdán debidamente identificado, y a quien conozco personalmente, habiendo firmado en mi presencia el documento anterior o anexo, y habiendo jurado o declarado ante mí que, a su leal saber y entender, el contenido de este documento es auténtico y exacto.

Notario público



28-07-94 15:39 INIMA

ID=913847888

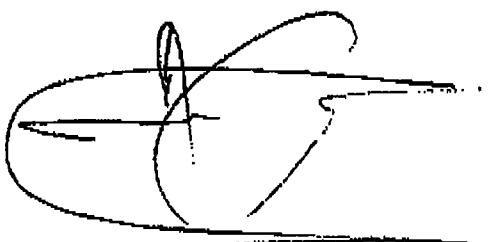
P 19/27

5Q6234518

05/2004



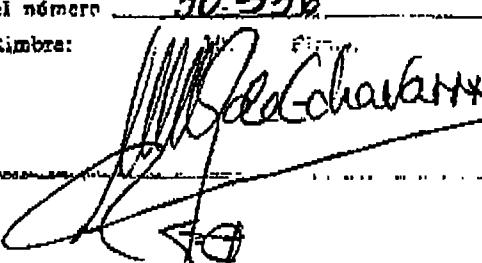
ES COPIA exacta de su matriz donde queda anotada su expedición. La expido para EL COMPARCIENTE SEGUN INTERVIENE en seis folios de papel timbrado del estado para documentos notariales, números 5Q6234513, 5Q6234514, 5Q6234515, 5Q6234516, 5Q6234517 y 5Q6234518 que signo, firmo, rubrico y sello, En Madrid, el veintiuno de julio del dos mil cuatro. DOY FE.



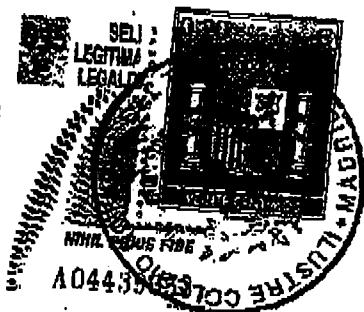
Aplicación Arancel, Disposición Adicional 3^a Ley 8/89
DOCUMENTO SIN CUANTÍA

Apostille (o legalización únicamente)
(Convención de La Haya del 5 octubre 1961)
(Real Decreto 2433/1978, de 2 de octubre)

1. País: España
El presente documento público.
2. Ha sido firmado por D. Martín M.
Ricardo Casanova
3. Actuando en calidad de **NOTARIO**
4. Se halla sellado/timbrado con el de su Notaría
CERTIFICADO
5. En Madrid 6. El 22 julio 2004
7. Por el Decano del Colegio Notarial de Madrid
8. Con el número 30-536
9. Sello/timbre:



Doña M^a Nieves González de Echávarri Díaz
Firma delegada del Decano



28-07-04 15:48 INIMA

ID=913847588

P 21/27

a / a ' copy GEXHIBIT CAFFIDAVIT of Antonio López Cerdán

Now comes the undersigned affiant, Antonio López Cerdán and does depone, swear and say as follows:

1. I am employed in the Division of Economic Finance of Inima, Servicios Europeos de Medio Ambiente, S.A. ("Inima"), the managing member of Aquaria LLC, d/b/a Aquaria Water LLC ("Aquaria"), and as such am authorized to submit this affidavit to describe the proposed financing of the water treatment facility which is the subject of this petition.
2. I refer in this affidavit to the Affidavit of José Antonio Membiela Martínez (Exhibit A to this Petition) and the Affidavit of Juan Pablo Díaz Batanero (Exhibit B to this Petition). All terms used in my affidavit below that are not otherwise defined have the meanings set forth in those other affidavits.
3. In order to finance the development and construction of the Plant in North Dighton, Massachusetts, and the Water Lines to certain cities and towns within the Commonwealth of Massachusetts, including the City of Brockton, Aquaria will be borrowing substantial funds from its proposed project finance lenders, in particular Banco Santander Central Hispano, a bank with headquarters in Madrid, Spain ("BSCH" or "Project Lenders"). The loan to Aquaria by BSCH may be guaranteed by Ambac Assurance Corporation ("Ambac").
4. In order to finance the development, construction and operation of the Plant and the Water Lines (collectively, sometimes referred to as the "Water Treatment Facility"), Aquaria is proposing to borrow money from, issue indebtedness to, BSCH (the "Loan") and in connection therewith to enter into loan agreements and other financing arrangements with BSCH pursuant to loan documentation substantially in the form submitted as Exhibit D to the Petition of Aquaria (the "Loan Documentation").
5. The Loan is a project financing arrangement of the sort typically utilized in significant capital projects such as the Water Treatment Facility.
6. The Project Lenders have reviewed the regulatory provisions affecting water treatment plants similar to the Water Treatment Facility in the Commonwealth of Massachusetts and the Project Lenders have required, as a condition of making the Loan to Aquaria, that Aquaria obtain the assurances set forth in Aquaria's Petition to the Department of Telecommunications and Energy (the "Department"). Specifically:
 - a) The Project Lenders have requested that Aquaria obtain certain specific assurances from the Department in order to confirm that the Project Lenders will not face the prospect of becoming a regulated water company upon exercise of standard mortgagee rights that are included in the terms of the Loan documentation including, for example, the exercise by the Project



Lenders of their rights under the mortgage to exercise typical mortgagees' remedies, including taking possession of the Water Treatment Facility or selling the Water Treatment Facility at foreclosure sale.

- c) Aquaria's Project Lenders have also required assurance that so long as Aquaria's business continues to be exclusively related to the production of desalinated water and the wholesale supply of such water in bulk to cities and towns in the Commonwealth (the "Wholesale Business Condition") that Aquaria's Project Lenders, not otherwise water companies, would in the event they took possession under the mortgage either not become "water companies" or be subject to the same minimal supervision applicable to Aquaria.
- d) In addition, the Project Lenders have required Aquaria to obtain findings and rulings from the Department that (i) Aquaria would not be subject to the provisions of Sections 96, 99, 101, 102A and 102B of Chapter 164 with respect to any consolidation, sale, merger or acquisition in which it may be involved; (ii) Aquaria would not be subject to the provisions of Section 4 through 33 of Chapter 164 relating to the corporate rights and liabilities of gas and electric companies, made applicable to water utilities by Chapter 165, Section 2; (iii) Aquaria would not be subject to the provisions of Sections 92 and 128 of Chapter 164; (iv) Aquaria would not be subject to the informational requirements prescribed pursuant to Sections 80, 81, 82 and 83 of Chapter 164 respecting books, accounts and records and reporting returns to the Department; and (v) Aquaria would not be subject to the regulations promulgated by the Department related to ratemaking oversight (including those related to return on equity and to accounting procedures, set forth in 220 C.M.R. Sections 31.00 and 52.00 respectively).

7. The final amount of the Loan will be based upon the final estimated cost of construction that will be determined when bids are received. However, the Loan amount will be between \$32,000,000 and \$36,000,000.

8. The interest rate on the promissory note for the Loan will have an interest rate between 4.60% and 8.60% per annum.

9. It is essential for the financing of the Water Treatment Facility that Aquaria obtain the findings and rulings requested in its Petition.



Subscribed and sworn to under the pains and penalties of perjury this 19th day of July, 2004.

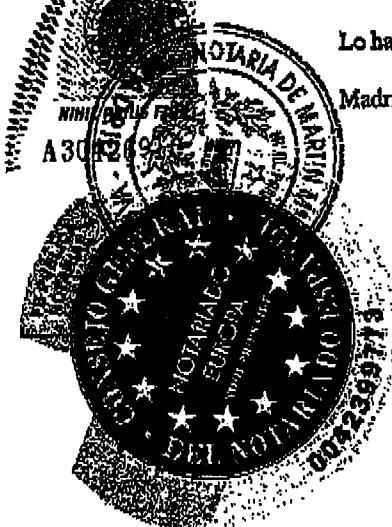
Antonio López Cerdán

On this 19th day of July, 2004, before me, the undersigned notary public, personally appeared Antonio López Cerdán proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person who signed the preceding or attached document in my presence, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of her knowledge and belief.

Notary Public



LEGITIMACION DE FIRMA: Yo, MARTIN MARIA RECARTE CASANOVA, Notario del Ilustre Colegio de Madrid, DOY FE Y LEGITIMO la firma que antecede de DON ANTONIO LOPEZ CERDAN, con DNI número 74.207.081-L, por haber sido puesta en mi presencia.



Lo hago constar en mi libro indicador con el número 5.310

Madrid, a 21 de julio de 2004.

28-07-04 15:41 INIMA

ID=913847886

ANEXO CDECLARACIÓN JURADA de Antonio López Cerdán

Comparece el declarante abajo firmante, Antonio López Cerdán, quien afirma, jura y declara lo que sigue:

1. Trabajo en la División de Finanzas Económicas de Inima, Servicios Europeos de Medio Ambiente, S.A. ("Inima"), el miembro gestor de Aquaria LLC, d/b/a Aquaria Water LLC ("Aquaria"), y como tal estoy autorizado para efectuar esta declaración jurada con el fin de explicar la propuesta de financiación relativa a la instalación para el tratamiento de aguas que constituye el objeto de esta petición.
2. En esta declaración jurada me remito a la declaración jurada de José Antonio Membiela Martínez (anexo A de la presente petición) y a la declaración jurada de Juan Pablo Díaz Batanero (anexo B de la presente petición). Todos los términos utilizados en mi declaración jurada, que sigue a continuación, y salvo indicación en contra, tienen el mismo significado que el atribuido en las otras declaraciones juradas.
3. Con el fin de financiar el desarrollo y la construcción de la planta en North Dighton, Massachusetts, así como las tuberías del agua hacia determinadas ciudades y pueblos dentro del Estado de Massachusetts, incluyendo la ciudad de Brockton, Aquaria aceptará fondos de cuantía considerable de los prestamistas propuestos para la financiación del proyecto, en concreto Banco Santander Central Hispano, banco cuya sede social se encuentra en Madrid, España ("BSCH" o "Prestamistas del proyecto"). El préstamo a Aquaria por parte de BSCH podría estar garantizado por Ambac Assurance Corporation ("Ambac").
4. Con el fin de financiar el desarrollo, la construcción y la explotación de la planta y de las tuberías del agua (denominados colectivamente en ocasiones "Instalación para el tratamiento de aguas"), Aquaria propone aceptar un préstamo, asumiendo la correspondiente deuda con BSCH (el "préstamo"), y a este respecto propone alcanzar un acuerdo sobre el préstamo y otros acuerdos de financiación con BSCH de conformidad con la documentación del préstamo, fundamentalmente el anexo D de la presente petición formulada por Aquaria (la "documentación del préstamo").
5. El préstamo constituye un acuerdo de financiación del proyecto del tipo convencionalmente utilizado en proyectos de capital importante, como la instalación para el tratamiento de aguas.
6. Los prestamistas del proyecto han revisado las disposiciones legales relativas a las plantas para el tratamiento de aguas similares a la instalación para el tratamiento de aguas en el Estado de Massachusetts, y dichos prestamistas del proyecto han exigido, como condición para conceder el préstamo a Aquaria, que Aquaria obtenga las garantías descritas en la petición de ~~el~~ al Departamento de Telecomunicaciones y Energía (el "Departamento"). En concreto:


JOSÉ L. GOMEZ
RODRIGUEZ
Intérprete Jurado
Notario, N.-Bac. 2.
Tel/Fax: 91 301 00 72
28057 Madrid

Los prestamistas del proyecto han exigido que Aquaria obtenga determinadas garantías específicas del Departamento confirmando que los prestamistas del proyecto no habrán de enfrentarse a la posibilidad de convertirse en una

compañía de agua reglamentada por virtud del ejercicio de los derechos hipotecarios legales contemplados en las cláusulas de la documentación del préstamo, incluyendo por ejemplo, el ejercicio por los prestamistas del

- b) Proyecto de sus derechos hipotecarios para obtener las reparaciones propias del acreedor hipotecario, incluyendo la adquisición de la posesión de la instalación para el tratamiento de aguas, o la venta de la instalación para el tratamiento de aguas como venta en ejecución de hipoteca.
- c) Los prestamistas del proyecto de Aquaria han exigido igualmente garantías de que mientras el objeto comercial de Aquaria continúe estando exclusivamente relacionado con la producción de agua desalinizada y el suministro al por mayor de dicho agua en grandes cantidades a las ciudades y pueblos del Estado (la "condición de comercio al por mayor") los prestamistas del proyecto de Aquaria, que no son compañías de agua, en caso de adquirir la posesión en virtud de la ejecución de hipoteca no se convertirán en "compañías de agua" ni quedarán sometidas a la misma supervisión mínima que es aplicable a Aquaria.
- d) Además, los prestamistas del proyecto han exigido a Aquaria que obtenga una decisión del Departamento conforme a la cual (i) Aquaria no quedará sometida a las disposiciones contenidas en las secciones 96, 99, 101, 102A y 102B del capítulo 164 con respecto a cualquier fusión, venta, unión o adquisición en la que pudiera verse involucrada; (ii) Aquaria no quedará sometida a las disposiciones de la secciones 4 a 33 del capítulo 164 con respecto a los derechos y obligaciones sociales de las compañías de gas y electricidad que resulten aplicables a las instalaciones de agua en virtud del capítulo 165, sección 2; (iii) Aquaria no quedará sometida a las disposiciones de las secciones 92 y 128 del capítulo 164; (iv) Aquaria no quedará sometida a las exigencias de información impuestas conforme a las secciones 80, 81, 82 y 83 del capítulo 164 con respecto a los libros, cuentas y registros y las declaraciones de la renta comunicadas al Departamento; y (v) Aquaria no quedará sometida a la normativa aprobada por el Departamento referente a la supervisión sobre la fijación de precios (incluyendo las disposiciones relacionadas con el rendimiento de los activos y los procedimientos contables, establecidas en el 220 C.M.R. Secciones 31.00 y 52.00, respectivamente).

7. El importe final del préstamo se calculará a partir del coste final de construcción estimado, el cual será determinado una vez recibidas las ofertas. No obstante, el importe del préstamo estará comprendido entre los 32.000.000\$ y los 36.000.000\$.

8. El tipo de interés del pagaré del préstamo será un tipo de interés comprendido entre el 4,60% y el 8,60% anual.



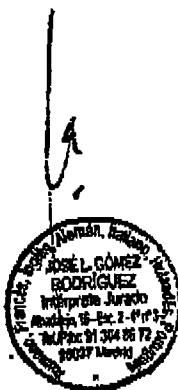
Es imprescindible para la financiación de la instalación para el tratamiento de aguas que RODEO AQUARIA obtenga la decisión exigida en esta petición.

Firmado y jurado so pena de perjurio el 19 de julio de 2004.

Antonio López Cerdán

Con fecha de 19 de julio de 2004, comparece en persona ante mí, el abajo firmante notario público, Antonio López Cerdán debidamente identificado, y a quien conozco personalmente, habiendo firmado en mi presencia el documento anterior o anexo, y habiendo jurado o declarado ante mí que, a su leal saber y entender, el contenido de este documento es auténtico y exacto.

Notario público





José Luis Gómez Rodríguez
Intérprete-jurado de ~~17/07/04~~
certifica que la que antecede
es traducción fiel y completa
al ~~original~~ de un
documento redactado en
lengua ~~ingles~~
En Madrid a

20 JUL 2004
[Handwritten signature]

MINISTERIO DE ASUNTOS EXTERIORES Y DE COOPERACIÓN DELEGACIÓN VISTO BUENO PARA LEGALIZAR LA FIRMA DE D. JOSÉ LUIS GÓMEZ RODRÍGUEZ POR SER, AL PARECER, LA SUYA, SIN REFERIR EN EL CONTENIDO DEL DOCUMENTO NI ULTERIOR DESTINO QUE PUEDA DÁRSERLE.
Madrid, 20 JUL 2004
P. EL SUBSECRETARIO.
<i>[Signature]</i>
Ernesto Méndez Méndez Jefe de Negocios

EXHIBIT D

To Petition of Aquaria LLC to the
Department of Telecommunications and Energy

Loan Documentation

LIST OF LOAN DOCUMENTS

1. Form of Credit Agreement
2. Exhibit A – Definitions to Credit Agreement
3. Exhibit B1 – Form of Construction Note
4. Exhibit B2 – Form of Term Note
5. Exhibit D1 – Form of Collateral Agency Agreement
6. Exhibit D2 – Form of Project Completion Guaranty
7. Exhibit D3A – Form of Mortgage Security Agreement and Fixture Financing Agreement
8. Exhibit D3B – Assignment of Leases and Rents
9. Exhibit D4 – Form of Security Agreement
10. Exhibit D5 – Form of Pledge and Security Agreement
11. Exhibit D6 – Form of Equity Contribution and Sponsor Agreement